

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

JOHN H. FAIR,	)	4:07CV3063
	)	
Petitioner,	)	
	)	
v.	)	<b>MEMORANDUM AND</b>
	)	<b>ORDER</b>
ROBERT HOUSTON,	)	
	)	
Respondent.	)	

This matter is before the court on Petitioner John H. Fair's Motion to Strike Respondent's Brief ([filing no. 41](#)) and his Motion to Appoint Counsel ([filing no. 42](#)). Plaintiff's Motion to Strike Respondent's Brief asks this court to strike Respondent's Reply Brief ([filing no. 40](#)) as untimely. ([Filing No. 41](#) at CM/ECF p. 1.) However, this court granted Respondent's Motion to Extend time to file a reply brief. (Filing No. 44, text-only Order.) Accordingly, Respondent's Reply Brief ([filing no. 40](#)) is timely, and Petitioner's Motion to Strike Respondent's Brief ([filing no. 41](#)) is denied.

Plaintiff also seeks the appointment of counsel. ([Filing No. 42.](#)) "There is neither a constitutional nor statutory right to counsel in habeas proceedings; instead, [appointment] is committed to the discretion of the trial court." [McCall v. Benson, 114 F.3d 754, 756 \(8th Cir. 1997\)](#). As a general rule, counsel will not be appointed unless the case is unusually complex or the petitioner's ability to investigate and articulate the claims is unusually impaired or an evidentiary hearing is required. *See, e.g., Morris v. Dormire, 217 F.3d 556, 558-59 (8th Cir. 2000), cert. denied, 531 U.S. 984 (2000); Hoggard v. Purkett, 29 F.3d 469, 471 (8th Cir. 1994)* (citations omitted). *See also Rule 8(c) of the Rules Governing Section 2254 Cases in the United States District Courts* (requiring appointment of counsel if an evidentiary hearing is warranted.) The court has carefully reviewed the Petition and Motion to Appoint Counsel. The court finds that there is no need for the appointment of counsel at this

time.

IT IS THEREFORE ORDERED that:

1. Plaintiff's Motion to Strike Respondent's Brief ([filing no. 41](#)) is denied.
2. Plaintiff's Motion to Appoint Counsel ([filing no. 42](#)) is denied without prejudice.

August 18, 2008

BY THE COURT:

*s/Richard G. Kopf*  
United States District Judge